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Docket No. 11853-U

In Re: Petition of AT&T Communications of the Southern States, Inc. and Teleport Communications Atlanta, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996.

ORDER

Appearances

DOCKET#

11853

DOCUMENT#

46713

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On behalf of the Commission Staff
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BY THE COMMISSION:

On February 4, 2000, AT&T Communications of the Southern States, Inc., and Teleport Communications Atlanta, Inc. (collectively "AT&T") petitioned the Georgia Public Service Commission ("Commission") to arbitrate certain unresolved issues in the interconnection negotiations between AT&T and BellSouth Telecommunications, Inc.

I. JURISDICTION AND PROCEEDINGS

Under the Federal Telecommunications Act of 1996 (the Federal Act), State Commissions are authorized to decide the issues presented in a petition for arbitration of interconnection agreements. In addition to its jurisdiction of this matter pursuant to Sections 251

and 252 of the Federal Act, the Commission also has general authority and jurisdiction over the subject matter of this proceeding, conferred upon the Commission by Georgia's Telecommunications and Competition Development Act of 1995 (Georgia Act), O.C.G.A. §§ 46-5-160 *et seq.*, and generally O.C.G.A. §§ 46-1-1 *et seq.*, 46-2-20, 46-2-21 and 46-2-23.

The Commission approved an interconnection agreement between the parties for a three-year period, and the agreement was in effect until February 3, 2000. On August 30, 2000, the Commission issued an order scheduling hearings in this matter. Hearings were held before the Commission on October 30 and 31, 2000. On November 27, 2000, the parties filed briefs on the unresolved issues.

The Commission has before it the testimony, evidence, arguments of counsel and all appropriate matters of record enabling it to reach its decision.

II. FINDINGS AND CONCLUSIONS

1. Issue 1

Should calls to Internet Service Providers be treated as local traffic for the purposes of reciprocal compensation?

BellSouth argues that reciprocal compensation payments are not due because ISP-bound traffic is not local traffic. The Commission has found previously that ISP traffic is local in nature. See Docket Nos. 11901-U, 10854-U, 10767-U, 9281-U¹. While reserving its right to seek judicial review from this Commission finding, BellSouth states that it will abide by the Commission's decision in Docket No. 10767-U. In Docket No. 10767-U, the Commission directed the parties to track reciprocal compensation payments, "subject to a true-up mechanism approved by the Commission as warranted by the outcome of the FCC's Rule-Making in CC Docket No. 99-68 on ISP-bound traffic." (Order, p. 4 of 11).

However, subsequent to the Commission's order in Docket No. 10767-U, the Commission addressed this issue in Docket No. 10854-U. In its order in Docket No. 10854-U,

¹ Docket No. 11901-U: *Petition of MCI Metro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*; Docket No. 10854-U: *Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*; Docket No. 10767-U: *Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*; Docket No. 9281-U *Complaint of e.spire Communications, Inc. Against BellSouth Telecommunications, Inc.*

the Commission ordered BellSouth to pay reciprocal compensation for calls to ISPs without the payments being subject to a true-up mechanism. (Order p. 7 of 13). The Commission noted that District of Columbia Circuit Court of Appeals decision vacating the FCC's Declaratory Ruling for "want of reasoned decision-making" with regard to the FCC's use of the "end-to-end" analysis returned the status of the issue to an open question for the Commission to decide. Consistent with the Commission's decision in Docket No. 10854-U, and subsequent orders addressing this issue, the Commission finds that BellSouth must pay reciprocal compensation on ISP-bound traffic and that those payments are not subject to a true-up mechanism.

2. Issue 7

What price (including deaveraged prices where appropriate should BellSouth be permitted to charge for the following combinations of elements?

**DS3 digital loop with DS3 dedicated interoffice transport.
4 wire DS1 local channel with DS1 interoffice transport**

DS3 local channel with DS3 interoffice transport

In Docket No. 10692-U, *Generic Proceeding to Establish Long-Term Pricing Policies For Unbundled Network Elements*, the Commission established recurring and nonrecurring rates for eight different pre-existing loop and transport combinations. The combinations at issue here, however, were not addressed in the Commission's order in that proceeding. BellSouth and AT&T each propose separate methodologies for setting rates for the above combinations.

BellSouth proposes that the Commission set the recurring rates for the three combinations at the sum of the stand-alone network element prices. (BellSouth Post-Hearing Brief, p. 4). The Commission established recurring rates for the stand-alone DS1 local channel and DS1 dedicated interoffice transport elements in Docket No. 7061-U, *Review of Cost Studies, Methodologies, and Cost-Based Rates for Interconnection and Unbundling of BellSouth Telecommunications Services*. For nonrecurring rates, BellSouth's proposal distinguishes between elements that are currently combined and elements that are not currently combined.² For those currently combined combinations, BellSouth proposes that the Commission establish the same nonrecurring rate that the Commission ordered in Docket No. 10692-U. BellSouth proposes a nonrecurring rate for combinations not currently combined at the sum of the stand-alone nonrecurring rates for the elements that make up each combination. (BellSouth Post-Hearing Brief, p. 4).

² In Docket No. 10692-U, the Commission found that FCC "Rule 315(b), by its own terms, applies to elements that the incumbent 'currently combines,' not merely elements which are 'currently combined.'" (February 1, 2000, Order, p. 11 of 23). The Order further explains that in ¶ 296 of the FCC's First Report and Order, the FCC stated that "the proper meaning of 'currently combines' is 'ordinarily combined within their network in the manner in which they are typically combined.'" *Id.* While the FCC stated that it would decline to address this issue in its Third Report and Order, it did not disavow the position it took in its First Report and Order. Therefore, the FCC's only interpretation of "currently combines" remains that which was stated in its First Report and Order.

AT&T argues that BellSouth bases its UNE rates on inappropriate cost model assumptions. AT&T states that BellSouth's proposals must be adjusted in order to comply with the FCC's forward-looking TELRIC costing standard. (AT&T Post-Hearing Brief, p. 48). Although AT&T proposes adjustments to BellSouth's proposals in this proceeding, AT&T states that it would not object to a generic proceeding "to address these and all other UNE rate issues which have arisen since the Commission issued its orders in Docket Nos. 7061-U and 10692-U." *Id.* at 48, Footnote 32.

The Commission finds that the most efficient and fair resolution to this issue is to commence a generic proceeding to establish permanent rates for the combined UNEs that have arisen since Docket No. 10692-U. In the interim, the Commission adopts the rates proposed by BellSouth, subject to a true-up.

3. Issue 8

What are the appropriate rates and charges (including deaveraged prices and recurring and nonrecurring prices where appropriate) for the following UNEs for which rates have not been established:

DS3 loops

DS3 dedicated interoffice transport

DS3 dedicated local channels

Dedicated local channels with interoffice transmission

DS0/DS1 multiplexers

DS1/DS3 multiplexers

BellSouth states that recurring and nonrecurring rates for DS3 loops, DS3 dedicated interoffice transport, DS3 dedicated local channels, DS0/DS1 multiplexers, and DS1/DS3 multiplexers were filed with the Commission in Docket No. 7253-U, *BellSouth Telecommunications, Inc. Statement of Generally Available Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996*. AT&T proposes modifications to BellSouth's methodologies that it asserts are more consistent with the TELRIC philosophy. (Prefiled Direct Testimony of Jeffrey King, p. 9).

Similar to Issue 7, this issue deals with combinations that have arisen since the Commission's order in Docket No. 10692-U. Accordingly, the Commission will address these combinations in the context of a generic proceeding. In the interim, and subject to a true-up mechanism, the Commission will establish the rates for these combinations consistent with BellSouth's proposal.

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4. Issue 9

Under what rates, terms, and conditions may AT&T purchase network elements or combinations to replace services currently purchased from BellSouth tariffs?

The primary question in Issue 9 is whether BellSouth should be entitled to enforce the fee for early termination provided for in its contracts with some of its retail customers. The customer receives favorable rates in exchange for this provision. BellSouth characterizes the issue as one of simple fairness. Since the customer received the benefit of the reduced rates, the customer should be held to its contractual obligations. It is inequitable to allow the customer to benefit from reduced rates under the contract, benefit again from switching to AT&T, and then not pay the termination fees it agreed to pay in exchange for these benefits. (BellSouth Post-Hearing Brief, p. 10). AT&T argues that the termination liability fees should not be paid because service has not been terminated. AT&T argues that it "is merely seeking to have the current service converted to a different rate structure." (AT&T Post-Hearing Brief, p. 64).

In its February 1, 2000, Order in Docket No. 10692-U, the Commission directed BellSouth to provide loop/transport combinations to CLECs. The Commission ordered the combinations in question to be made available statewide and free from any restrictions not mentioned in the Commission order. (Commission Order, p. 22).³ Since the Commission issued its order in Docket No. 10692-U, AT&T has been seeking to replace the tariffed services with the UNEs. (Tr. 67). In a footnote to its UNE Remand Order, the FCC stated that "any substitution of unbundled network elements for special access would require the requesting carrier to pay any *appropriate* termination penalties required under volume or term contracts." (p. 221, Footnote 985) (emphasis added). At the time that AT&T selected BellSouth's tariffed services, it did not have the option to order UNEs from BellSouth. A CLEC that has had to wait for the availability of UNEs should not be penalized for taking advantage of this option. The Commission finds, therefore, that a charge against AT&T as the customer for replacing tariffed services that it agreed to prior to BellSouth offering UNEs is not an "appropriate" termination penalty. AT&T shall not be required to pay termination liability fees when it converts special

³ The combinations addressed were: 2-wire voice grade extended loop with DS1 Dedicated Interoffice Transport; 4-wire voice grade extended loop with DS1 Dedicated Interoffice Transport; 4-wire 56 or 64 KBPS extended digital loop with Dedicated DS1 Interoffice Transport; Extended 2-wire VG Dedicated Local Channel with Dedicated DS1 Interoffice Transport; Extended 4-wire VG Dedicated Local Channel with Dedicated DS1 Interoffice Transport; Extended 4-wire DS1 Digital Loop with Dedicated DS1 Interoffice Transport; Extended 4-wire DS1 Digital Loop with Dedicated DS3 Interoffice Transport; and, Extended DS1 Dedicated Local Channel with Dedicated DS3 Interoffice Transport.

At the March 6, 2001, Administrative Session, the Commission voted to direct the parties to meet in an effort to agree to a date after which AT&T would owe termination charges for early termination of the contract. The parties were directed to try to agree to a date by March 13, 2001. The Commission also voted at the Administrative Session that if the parties were unable to agree, then the Commission would set the date certain for termination liability at February 1, 2000, which is the date that the Commission issued its order in Docket No. 10692-U. The Commission subsequently has been informed that the parties have been unable to agree upon a date. (BellSouth Letter to the Commission, dated March 21, 2001). Accordingly, AT&T shall not be required to pay termination liability fees when it converts special access services to UNEs for those instances when it began taking the special access services prior to February 1, 2000, the date of the Commission order in Docket No. 10692-U. Finally, if AT&T wins a BellSouth customer that is under a volume and term contract, BellSouth can pursue recovery from that customer of any termination liability fees.

5. Issue 10

How should AT&T and BellSouth interconnect their networks in order to originate and complete calls to end-users?

Under Section 252(c)(2) of the Federal Act, BellSouth has the duty to provide CLECs with interconnection with its network "at any technically feasible point within the carrier's network." The dispute among the parties concerns which party must bear the costs of transporting traffic from a BellSouth local calling area to the point of interconnection established by AT&T.

This issue has arisen in other arbitration proceedings before the Commission. In Docket No. 11901-U, the Commission ordered the initiation of a generic proceeding to address points of interconnection and virtual FX.⁴ Accordingly, the Commission finds it prudent not to rule on this issue in the context of this proceeding.

6. Issue 11

What terms and conditions, and what separate rates if any, should apply for AT&T to gain access to and use BellSouth facilities to serve multi-unit installations?

AT&T has requested to purchase from BellSouth subloop facilities in order to provide service to residential and business tenants in multi-dwelling units. This issue concerns how AT&T will access the subloop facilities, which consist of network terminating wire (NTW) and intrabuilding network cable (INC). BellSouth provides service to multi-tenant buildings through different means depending on whether the building is a garden-style apartment building or a high rise building. For garden-style apartment buildings, "BellSouth cross-connects the facilities that it has run to the building with . . . NTW." (BellSouth Post-Hearing Brief, p. 18). For high rise buildings, BellSouth performs this service using INC. The INC then cross-connects with the

⁴ The Commission has scheduled hearings in Docket No. 13542-U, Generic Proceeding on Point of Interconnection and Virtual FX Issues, for May 1-4, 2001.

NTW on each floor of the high rise building, and “[t]he NTW then runs to the Network Interface Device (NID) located on each tenant’s premises.” *Id.* at 19.

In the Third Report and Order, the FCC found that incumbent LECs, such as BellSouth, “must provide unbundled access to subloops nationwide, where technically feasible.” Third Report and Order, ¶ 205. The FCC defined “subloops” as “portions of the loop that can be accessed at terminals in the incumbent’s outside plant.” Third Report and Order, ¶ 206; Rule 319(a)(2).

The parties dispute whether BellSouth can require AT&T to access the facilities through an intermediary access terminal. BellSouth states the concern that if AT&T had access to its terminal, then every CLEC would be entitled to the same access. BellSouth claims that this would create administrative and security problems because BellSouth would have no way of knowing which of its facilities a particular CLEC was using. (BellSouth Post-Hearing Brief, p. 19). AT&T charges that the intermediary access terminal results in discrimination because AT&T has to pay for the terminal in order to access the same subloop elements that BellSouth can access without this additional charge. (AT&T Post-Hearing Brief, p. 30).

The FCC has stated that incumbents must permit CLECs to have direct access to their equipment once inside the building. *Deployment of Wireline Service Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-148, et al. (March 31, 1999) ¶ 42. Further, the FCC stated that incumbent LECs “may not require competitors to use an intermediate interconnection arrangement in lieu of direct connection to the incumbent’s network if technically feasible, because such intermediate points of interconnection simply increase collocation costs without concomitant benefit to incumbents.” *Id.* As stated above, BellSouth’s arguments for the intermediary access terminal focus on record keeping and security, rather than feasibility.

CLEC access to BellSouth facilities in multi-unit installations was also an issue in Docket No. 10418-U, *Interconnection Agreement Between MediaOne Telecommunications of Georgia, LLC and BellSouth Telecommunications, Inc.* In that proceeding, the Commission determined that NTW is a UNE. (Order, page 4 of 10). The Commission also found that interconnection at the minimum point of entry technically feasible. *Id.* at 6. In its Third Report and Order, the FCC also determined that “lack of access to unbundled subloops materially diminishes a requesting carrier’s ability to provide services that it seeks to offer.” ¶ 205. The FCC concluded that “access to subloop elements is likely to be the catalyst that will allow competitors, over time, to deploy their own complementary subloop facilities, and eventually to develop competitive loops.” *Id.*

Any resolution of this issue must, therefore, encourage competition and provide all parties with a clear point of demarcation. For CLECs to have to bear access costs that BellSouth does not incur is discriminatory and will not encourage competition. The same serving arrangement that the Commission approved for the garden-style apartments in Docket No. 10418-U should also apply for the wiring closet arrangement. BellSouth shall pay for the intermediary access terminal. AT&T shall provide BellSouth with a forecast of the number of customers that it is seeking to serve in the multi-dwelling unit. In addition, the Commission

approves a one-tier rate structure in which once AT&T receives access to the NTW, it also receives access to the riser cable. This will reduce AT&T's costs and reduce the delay to AT&T's customer. This arrangement shall be reciprocal, so that when AT&T is the primary provider of service in a multi-dwelling unit, and BellSouth wishes to serve a customer in that unit, BellSouth can access through the same type of serving arrangement on the same terms and conditions.

7. Issue 14

Should BellSouth be allowed to aggregate lines provided to multiple locations of a single customer to restrict AT&T's ability to purchase local circuit switching at UNE rates to serve any of the lines of that customer?

FCC Rule 51.319(c)(2) sets forth an exception to an ILEC's general obligation under FCC Rule 51.311, to provide nondiscriminatory access to local circuit switching capability and local tandem switching capability. FCC Rule 51.319(c)(2) states that "an incumbent LEC shall not be required to unbundle local circuit switching for requesting telecommunications carriers when the requesting telecommunications carrier serves end-users with four or more voice grade (DSO) equivalents or lines." This exception is subject to the ILEC providing nondiscriminatory access to combinations of unbundled loops and transport throughout Density Zone 1. In addition, for the exception to apply, the ILEC's local circuit switches must be located in the top 50 Metropolitan Statistical Area (MSA), and in Density Zone 1.

At issue between the parties is whether this exception applies when the customer's four lines are not all located at the same premises. AT&T argues that the exception is not intended to apply to such a situation. The FCC stated that the exception was intended to develop competition "particularly for large business customers or other users with substantial telecommunications needs." *UNE Remand Order* ¶ 255. AT&T argues that to allow BellSouth to aggregate lines would be to "escape its obligation to provide unbundled local switching." (AT&T Post-Hearing Brief, p. 46).

BellSouth responds that the availability of EELs makes the geographic location of a customer's lines irrelevant. (BellSouth Post-Hearing Brief, p. 23). Since BellSouth would have to provide EELs in order to take advantage of the exception, AT&T would have the ability to use EELs to connect customers to AT&T's switch. *Id. at 24*. BellSouth argues that the intent of the rule is to distinguish between mass markets and the medium to large business market, and that therefore, the exception should be found to apply regardless of the location of the lines. *Id.*

The Commission is not persuaded by AT&T's argument that the FCC did not intend the exception to apply in cases where the lines are located at different premises. The plain language of the FCC Rule 51.319(c)(2) states that an ILEC's obligation does not apply to the circumstances at issue. The Commission finds that BellSouth should be allowed to aggregate lines provided to multiple locations of a single customer to restrict AT&T's ability to purchase local circuit switching at UNE rates to serve any of the lines of that customer.

8. Issue 15

Should AT&T be permitted to charge tandem rate elements when its switch serves a geographic area comparable to that served by BellSouth's tandem switch?

This issue concerns whether AT&T should receive reciprocal compensation at the tandem rate for traffic transported and terminated via its switch. The legal question is whether the CLEC must demonstrate both that its switch serves a comparable geographic area and that it performs a similar functionality. FCC Rule 711(a)(3) provides:

Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than the incumbent LEC is the incumbent LEC's tandem interconnection rate.

However, the FCC has also directed state commissions to consider whether new technologies perform similar functions to an ILEC's tandem switch. (*Local Competition Order*, ¶1090).

The Commission has previously held that a CLEC must demonstrate that its switch serves a comparable geographic area and that it performs similar functionality. (See, Docket No. 10767-IT *In re: Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*).

The evidence supports that AT&T's switches cover the same geographic area as BellSouth's tandem switches. (Talbot Direct Testimony at 21-22; DLT-16). Although AT&T disputes that its switches must pass a functionality test, it asserts that its switch performs the same functions as BellSouth's switch. AT&T's switches route interLATA traffic, direct trunking has been established to enable calls between AT&T customers to be completed across the LATA or across the state solely on AT&T's network. In addition, AT&T has established direct trunking to each BellSouth tandem so that calls between AT&T and BellSouth customers do not need to transit multiple switches. (AT&T Post-Hearing Brief, p. 20). The Commission finds that AT&T's tandem switch performs the same functions as BellSouth's switch. Therefore, AT&T is permitted to charge tandem rate elements.

9. Issue 16

What are the appropriate means for BellSouth to provide unbundled local loops for provision of DSL service when such loops are provisioned on digital loop carrier facilities?

This issue was addressed by parties in Docket No. 11900-U, *Investigation of BellSouth Telecommunications, Inc.'s Provision of Unbundled Network Elements for the xDSL Service Providers*. The Commission will reach a decision on this matter in the context of that proceeding.

10. Issue 21

What is the appropriate treatment of outbound voice calls over internet protocol ("IP") telephony, as it pertains to reciprocal compensation?

The preliminary question to answer on this issue is whether the Commission has jurisdiction to decide whether switched access charges should apply to IP telephony. AT&T argues that the FCC has exclusive jurisdiction over interstate telecommunication issues, and that the FCC has decided not to assess switched access charges to these kinds of calls. (AT&T Post-Hearing Brief, p. 61). BellSouth argues that since the call in question is a long distance call, the Commission should determine that reciprocal compensation is not due. (BellSouth Post-Hearing Brief, p. 42).

In Docket No. 11644-U, *Petition of BellSouth Telecommunications, Inc. For Arbitration of an Interconnection Agreement With Intermedia Communications, Inc. Pursuant To Section 252(b) of the Telecommunications Act Of 1996*, the issue arose as to whether switched access charges should apply to IP calls. In that proceeding, the Commission adopted the Commission Staff's recommendation to defer ruling on the issue until it has had an opportunity to consider the issue further.⁵ (Order, p 14 of 17). Consistent with its order in that proceeding, the Commission defers ruling until it can further consider the issue.

11. Issue 25

When AT&T and BellSouth have adjoining facilities in a building outside BellSouth's central office, should AT&T be able to purchase cross connect facilities to connect to BellSouth or other CLEC networks without having to collocate in BellSouth's portion of the building?

A condominium arrangement is a central office building that is owned and shared by both BellSouth and AT&T, such that AT&T and BellSouth offices would occupy separate areas of the same building. This arrangement resulted from the divestiture of AT&T, and is unique to AT&T among CLECs. AT&T is asking to use the condominium arrangement to avoid having to collocate through BellSouth's central office. BellSouth's objection is that it would provide AT&T with an advantage over other CLECs. (Tr. 280-281).

The Commission finds that it would not benefit competition to allow AT&T to benefit from its previous relationship with BellSouth. Therefore, the Commission adopts BellSouth's position on this issue.

⁵ In Docket No. 11901-U, *Petition of MCI Metro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, the Commission also deferred ruling on this issue. (Order, p.12 of 28).

12. Issue 26

Is conducting a statewide investigation of criminal history records for each AT&T employee or agent being considered to work on a BellSouth premises a security measure that BellSouth may impose on AT&T?

At issue is whether a statewide investigation of criminal history records for AT&T employees and agents working on BellSouth's premises falls within a reasonable security arrangement as intended in the FCC's *First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, 14 FCC Rcd 4761 (rel. March 31, 1999) ("Advanced Services Order"). AT&T argues that it does not. Instead, AT&T asserts that BellSouth's position is intended to stall competition without a concomitant benefit to security. (AT&T Post-Hearing Brief, p. 92).

In determining whether BellSouth's security concerns are legitimate, it is instructive to examine the measures BellSouth takes with regard to its own employees. BellSouth sponsored testimony that it performs criminal background checks on its employees prior to hiring. (Pre-filed Testimony of W. Keith Milner, p. 55). AT&T does not dispute this testimony. (Tr. 285). BellSouth has agreed to limit the criminal background checks to only those AT&T employees who have been hired by AT&T within the last five years. (Tr. 285).

The Commission finds that it is reasonable for BellSouth to require criminal background checks on AT&T employees with less than five years of service. However, BellSouth must provide to AT&T the criminal background checks that it performs on its own employees to demonstrate that the checks on AT&T's employees are no more extensive or burdensome.

13. Issue 31

Has BellSouth provided sufficient customized routing in accordance with State and Federal law to allow it to avoid providing Operator Services/Directory Assistance ("OS/DA") as a UNE?

This issue involves a dispute between the parties over whether the methods of customized routing provided for by BellSouth are adequate. As explained by BellSouth witness, W. Keith Miller, "customized routing allows calls from a CLEC's customer served by a BellSouth switch to reach the CLEC's choice of operator service or directory assistance platform rather than BellSouth's operator service and directory assistance platforms." (Tr. 894).

The FCC has ordered ILECs to provide operator services and directory assistance ("OS/DA") as an unbundled network element, unless they provide "customized routing or a compatible signaling protocol." *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (released January 14, 2000). BellSouth provides two means of customized routing: the Line Class Code ("LCC") method and the Advanced Intelligent Network ("AIN") solution. AT&T disputes whether either of these methods are

viable. Therefore, AT&T's position is that BellSouth should be obligated to provide OS/DA as a UNE.

In its order in Docket No. 11901-U, the Commission determined that BellSouth met the requirement for customized routing through the LCC and AIN methods. Consistent with its decision in Docket No. 11901-U, the Commission finds that BellSouth has provided sufficient customized routing to avoid providing OS/DA as a UNE. Also consistent with its previous order, the Commission finds that BellSouth is required to file an implementation schedule for Originating Line Number Screening ("OLNS") within fifteen (15) days of the issuance of the Commission order. The availability of OLNS at reasonable rates should reduce AT&T's concerns on this matter.

14. Issue 32

What procedure should be established for AT&T to obtain loop-port combinations (UNE-P) using both Infrastructure and Customer Specific Provisioning?

Issue 32 involves the process for ordering operator services and directory assistance. AT&T's proposal is that it would place with BellSouth a "footprint" order. The footprint order "identifies and establishes the trunking and routing required to direct customers' OSDA calls to one or more platforms chosen by AT&T for the geographic footprint area." (Tr. 489). Once the necessary trunking and routing has been established, AT&T could submit to BellSouth local service requests ("LSRs"), which would identify for BellSouth which OS/DA platform to use for that customer. The process would allow OS/DA calls from AT&T customers to reach the platform chosen by AT&T. AT&T plans to offer AT&T-branded or unbranded BellSouth OS/DA or AT&T OS/DA platforms. (AT&T Post-Hearing Brief, p. 73).

The parties agree that AT&T is entitled to have OS/DA calls from AT&T customers routed to the platform of its choice. The disagreement between the parties concerns whether this entitlement is limited to situations in which AT&T wants to use a single routing plan for the orders it submits. BellSouth argues that the FCC limited BellSouth's obligation to where the CLEC wants to use a single routing plan. (BellSouth Post-Hearing Brief, p. 50).

In *FCC Louisiana II Order*, the FCC speaks directly to instances in which the CLEC has multiple routing plans.

If, however, a competitive LEC has more than one set of routing instructions for its customers, it seems reasonable and necessary for BellSouth to require the competitive LEC to include in its order an indicator that will inform BellSouth which selective routing pattern to use.

FCC Second Louisiana Order, ¶ 224.

The FCC does not limit CLECs to a single routing option; it merely requires the CLEC to include in its LSR an indicator. AT&T has stated that it is "more than willing" to include an indicator in its customer-specific orders to inform BellSouth which routing option to

use when multiple customized routing arrangements have been requested. (AT&T's Post-Hearing Brief p. 76).

The Commission adopts AT&T's position, requiring BellSouth to provide AT&T with the information it needs to order customized routing. AT&T should only be required to use an indicator on LSRs when AT&T is placing an order for a customer served from a switch where AT&T has requested more than one routing arrangement.

15. Issue 34

Should the Commission or a third party commercial arbitrator resolve disputes under the Interconnection Agreement?

Issue 34 raises both legal and policy concerns. Under their current interconnection agreement, the parties are required to use alternative dispute resolution to resolve contract disputes. BellSouth contends that the Commission does not have the authority to order the parties to resolve disputes through a third party when such disputes fall within the jurisdiction of the Commission. (BellSouth Post-Hearing Brief, p. 51). AT&T responds to this argument by stating that it has modified its proposal to allow the parties to agree to use alternative dispute resolution. Under AT&T's proposal, if the parties cannot agree, then the aggrieved party would have the right to use alternative dispute resolution. The Commission finds that the modified proposal offered by AT&T resolves the legal concerns raised by BellSouth.

From a policy perspective, AT&T asserts that issues will be resolved quicker if the parties have the option of third party arbitrator. (AT&T Post-Hearing Brief, p. 90). BellSouth claims that its own experience has demonstrated that the use of third party arbitrators has not proven either inexpensive or quick. (BellSouth Brief, p. 52). The Commission finds that AT&T's position will ease the heavy burden on Commission resources. While the Commission notes that it presently has an expedited procedure for complaints, it will conserve Commission resources for the parties to resolve disputes on an expedited basis by a neutral third party when the parties can agree to this method.

16. Issue 41

Should the Change Control Process be sufficiently comprehensive to ensure that there are processes to handle, at a minimum the following situations

BellSouth has interfaces that enable CLECs to work with its operational support systems ("OSS"). The change control process ("CCP") is set up to handle both the way these interfaces are changed and the methods and procedures used to change the interfaces. (Tr. 505). The parties dispute the appropriate scope of the CCP. AT&T's position is that the CCP needs to be more comprehensive, applying to the entire range of transactions required between AT&T and BellSouth. BellSouth responds that the current CCP adequately addresses the needs of CLECs.

A preliminary matter, on which the parties disagree, is whether this issue is appropriately arbitrated between AT&T and BellSouth. BellSouth points out that the terms and conditions of the CCP apply to all CLECs. Accordingly, BellSouth's position is that the changes to the CCP should be negotiated between the CCP committee members. (Tr. 1085). The Commission finds that the CCP is regional in nature and agrees that changes to it should not be decided upon in individual arbitrations. If parties have disputes arising from the CCP, then they should adhere to the escalation and dispute resolution process included in the CCP Document.

17. Issue 42

What should be the resolution of the following OSS issues currently pending in the change control process but not yet provided?

Issue 42 involves subparts a, b, and c, which the Commission will address separately. AT&T argues that BellSouth needs to improve its OSS in order for AT&T to receive the same quality of service as BellSouth. (AT&T Post-Hearing Brief, p. 79). Similar to Issue 41, BellSouth takes the position that these OSS issues should not be resolved in the context of an arbitration proceeding between AT&T and BellSouth. BellSouth argues that these industry issues would be more properly resolved in another forum.

a) parsed customer service records for pre-ordering?

AT&T states that it needs parsed customer service records ("CSRs") in order to obtain the same functionality available to BellSouth. The information AT&T is requesting would enable it to integrate its pre-ordering and ordering systems with BellSouth's systems. AT&T is requesting that BellSouth parse the CSRs consistent with how AT&T must submit its orders to BellSouth. (Tr. 530-531). This would save the AT&T customer service representative from having to type a customer's name rather than automatically populate data fields. (AT&T Post-Hearing Brief, p. 80). BellSouth's response is that this matter continues to be addressed by the CCP. (BellSouth Post-Hearing Brief, p. 64). Other CLECs participated in the CCP and accorded other change requests higher priority. *Id.*

This issue continues to be addressed by the CCP. Therefore, the most appropriate action to take in this proceeding is to ensure that this issue is resolved as expeditiously as possible, subject to the priority of issues in the CCP. Within fifteen days of the Commission order, BellSouth shall file an implementation schedule for parsing CSRs for pre-ordering.

b) ability to submit orders electronically for all services and elements

The Federal Act imposes upon BellSouth the duty to provide to requesting carriers interconnection with its network of equal or greater quality to that which BellSouth provides to itself. 47 U.S.C. 251(c)(2)(C). Issue 42(b) involves whether BellSouth needs to provide AT&T with the ability to submit orders electronically for all

services and elements in order to comply with this provision of the Federal Act. BellSouth claims that the answer is no, primarily because BellSouth does not submit all of its orders electronically. (BellSouth Post-Hearing Brief, p.66).

AT&T's ordering and pre-ordering systems are integrated with BellSouth's; therefore, AT&T's customer service representatives can process and send orders to BellSouth. However, in those instances in which AT&T cannot send the orders electronically, AT&T's customer service representatives must send it manually, a process which usually involves printing information out and providing it to BellSouth via facsimile. (BellSouth Post-Hearing Brief, p. 66).

BellSouth contends that the orders that must be handled manually are generally complex orders, and that BellSouth as well must process these orders manually. *Id.* Therefore, BellSouth argues that it does not discriminate against AT&T. AT&T disputes BellSouth's contention that it enters any orders manually. AT&T argues that although there may be "a number of manual pre-ordering processes, the ultimate ordering process itself is electronic." (AT&T Post-Hearing Brief, p. 82).

In dealing with the Percent Flow Through Service Request issue in Docket No. 7892-U, *Performance Measurements for Telecommunications Interconnection, Unbundling and Resale*, the Commission directed BellSouth and the CLECs to form and Improvement Task Force. The Commission ordered that "[t]his Task force shall jointly prepare an implementation report, that includes implementation target dates to eliminate the high BellSouth Caused Failures and the designed manual fallout for electronically submitted LSR's." (Commission Order, Docket No. 7892-U, Table 1). AT&T and BellSouth shall work together in the Improvement Task Force the Commission approved in Docket No. 7892-U to resolve this issue.

c) electronic processing after electronic ordering, without subsequent manual processing by BellSouth personnel?

Whereas sub-issue b) pertained to orders that BellSouth argues cannot be processed electronically, sub-issue c) concerns orders that "drop out" when electronic processing is attempted. AT&T's position is that these orders should be processed electronically. BellSouth reiterates its argument that nondiscriminatory access does not mandate that all orders be processed electronically. (BellSouth Post-Hearing Brief, pp. 68-69). Consistent with its treatment of sub-issue b), the Commission directs the parties to work together in the Improvement Task Force ordered by the Commission in Docket No. 7892-U.

18. Issue 43

Should BellSouth provide AT&T with the ability to access, via EBI/ECTA, the full functionality available to BellSouth from TAFI and WFA?

BellSouth contends that it has made available to CLECs, including AT&T, the exact interface to which BellSouth's retail operations have access for maintenance and repair functions. (BellSouth Post-Hearing Brief, p. 70). BellSouth uses a human-to-machine interface called Trouble Analysis and Facilitation Interface ("TAFI"). BellSouth also offers the Electronic Communication Trouble Administration ("ECTA") gateway.

AT&T alleges that each offering is plagued with limitations that keep either from satisfying BellSouth's legal obligation to provide non-discriminatory access. Because TAFI requires manual processing of orders by CLECs, AT&T argues that it is not an acceptable option for maintenance and repair functions. ECTA, while being a machine-to-machine interface, does not have the functionality of TAFI; therefore, AT&T argues that ECTA also places CLECs at a disadvantage.

AT&T argues that the FCC has found that the options that BellSouth offers do not meet the non-discriminatory requirement in the Federal Act. AT&T argues that the FCC found that "TAFI does not provide nondiscriminatory access because it cannot be used for all types of orders and because TAFI is a 'human to machine interface' meaning that new entrants cannot integrate it with the new entrant's own back office systems. (AT&T Post-Hearing Brief, p. 86, citing *FCC Louisiana II Order*, ¶ 148). However, this analysis misses the ultimate reasoning behind the FCC's decision. The FCC based its decision that BellSouth's repair and maintenance interfaces did not meet the non-discriminatory standard on the finding that they did not provide equivalent OSS functionalities to its own. *Id.*

This conclusion is consistent with a subsequent FCC decision in *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295 (Released: December 22, 1999). In that proceeding, the FCC found that Bell Atlantic was not obligated to demonstrate that it provided "an integrateable, application-to-application interface for maintenance and repair." ¶ 215. The evidence in this proceeding supports that BellSouth uses the same interface that it makes available to AT&T. (Tr. 1088). Therefore, BellSouth has provided parity with regard to its maintenance and repair interface.

III. CONCLUSION AND ORDERING PARAGRAPHS

The Commission finds and concludes that the issues that the parties presented to the Commission for arbitration should be resolved in accord with the terms and conditions as discussed in the preceding sections of this Order, pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 and Georgia's Telecommunications and Competition Development Act of 1995.

WHEREFORE IT IS ORDERED, that all findings, conclusions, statements, and directives made by the Commission and contained in the foregoing sections of this Order are

hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and orders of this Commission.

ORDERED FURTHER, that BellSouth must pay reciprocal compensation on ISP-bound traffic. These payments are not subject to a true-up mechanism.

ORDERED FURTHER, that the Commission will initiate a generic proceeding to set permanent rates for combination of UNEs that have arisen since the Commission's Order in Docket No. 10692-U. In the interim the Commission orders the rates proposed by BellSouth for the combination involved in Issue 7 and Issue 8, subject to a true-up mechanism.

ORDERED FURTHER, that AT&T shall not be required to pay termination liability fees when it converts special access services to UNEs for those instances when it began taking the special access services prior to February 1, 2000, the date of the Commission order in Docket No. 10692-U. If AT&T wins a BellSouth customer that is under a volume and term contract with BellSouth, then BellSouth can pursue that customer for recovery of termination liability fees.

ORDERED FURTHER, that the Commission will address how a CLEC and BellSouth interconnect their networks in order to originate and complete calls to end-users in Generic Proceeding on Point of Interconnection and Virtual FX Issues, Docket No. 13542-U. a generic proceeding.

ORDERED FURTHER, that BellSouth is required to incur the costs of installing the intermediary device for providing AT&T access to wiring closets. BellSouth shall not be permitted to pass these costs onto AT&T. AT&T shall provide BellSouth with a forecast of the number of customers that it seeks to serve in the multi-dwelling units. In addition, BellSouth shall implement a one-tier rate structure in which once AT&T receives access to NTW, it also receives access to the riser cable. Finally, this arrangement shall be reciprocal.

ORDERED FURTHER, BellSouth shall be allowed to aggregate lines provided to multiple locations of a single customer to restrict AT&T's ability to purchase local circuit switching at UNE rates to serve any of the lines of that customer.

ORDERED FURTHER, that AT&T shall be permitted to charge tandem rate elements because its switches are functionally equivalent and serve a comparable geographic area to those of BellSouth.

ORDERED FURTHER, that Issue 16 will be addressed in the Commission's Docket No. 11900-U.

ORDERED FURTHER, that the Commission will defer ruling on whether IP telephony is subject to access charges until it has had the opportunity to consider the issue further.

ORDERED FURTHER, that when AT&T and BellSouth have adjoining facilities in a building outside BellSouth's central office, AT&T shall not be able to purchase cross connect

facilities to connect to BellSouth or other CLEC networks without having to collocate in BellSouth's portion of the building.

ORDERED FURTHER, that BellSouth may require security background checks on AT&T's employees with less than five years of service to the extent that BellSouth performs criminal checks on its own employees. BellSouth must provide to AT&T the criminal checks that it performs on its own employees.

ORDERED FURTHER, BellSouth's AIN and LCC solutions meet the requirements for customized routing so that BellSouth is not required to provide OS/DA services as UNEs. BellSouth shall file an implementation schedule for OLNS within fifteen (15) days of the issuance of the Commission's order.

ORDERED FURTHER, that BellSouth shall provide AT&T with the information it needs to order customized routing. AT&T shall only be required to use an indicator on LSRs when it is placing an order for a customer served from a switch where AT&T has requested more than one routing arrangement.

ORDERED FURTHER, that the parties shall be allowed to use a third party arbitrator to resolve disputes under this Agreement, when agreed to by both parties.

ORDERED FURTHER, that if the parties have disputes arising from the change control process, then the parties shall adhere to the escalation and the dispute resolution process included in the change control document.

ORDERED FURTHER, that parsed customer service records for pre-ordering continue to be addressed in the change control process. BellSouth shall file an implementation schedule within fifteen days of the Commission order.

ORDERED FURTHER, that AT&T and BellSouth shall work together in the Improvement Task Force that the Commission approved in Docket No. 7892-U for issues on the ability to submit orders electronically for all services and elements; and also, for issues on the electronic processing after electronic ordering, without subsequent manual processing by BellSouth personnel.

ORDERED FURTHER, that BellSouth has provided AT&T with parity with respect to its maintenance and repair interface through its provision of complete access to TAFI.

ORDERED FURTHER, that the parties shall file with the Commission a copy of the arbitrated agreement within forty-five days from the date of this order.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 6th day of March, 2001.

Reece McAlister

Reece McAlister
Executive Secretary

Lauren McDonald, Jr.

Lauren McDonald, Jr.
Chairman

4-20-01

Date

04-20-01

Date